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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX REFERENCE NO. 52 OF 1989

The Commissioer of Income Tax ... Applicant

Versus

M/s. Benett Colemn and Co. Ltd. ... Respondent

Mr. A.S. Rao for the Applicant.

Mr. Jitendra Jain i/by P.D.S. Legal for Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR, JJ.
DATED: JULY 25, 2007

P.C.:

. Two questions were referred at the instance of the revenue. On behalf of the revenue, the learned counsel points out that the tax incidence is less than four lakhs and in the light of that, Reference returned unanswered on these two points made at the instance of Revenue.

. At the instance of the assessee, three questions were referred. In so far as Assessee is concerned, the following Reference was made in R.A. No.369(BOM)/1988. Considering the smallness of the amount, we do not propose to answer the said reference. Hence, Reference returned as unanswered.

. Two other questions were referred in R.A. No 2488(Bom)/87 which are as under :

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the sur-tax liability is not allowable as a deduction while computing the income from business for purposes of income tax.

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure on Municipal Taxes of Rs.8,468, Painting Expenses of Rs.9,614 and Repairs and Maintenance of Rs.11,958 incurred in respect of the 2 flats owned by the assessee and given to its Senior Executives, was includible for the purposes of computing the disallowance u/s.40A(5).

. In so far as first question is concerned, the same is answered against the assesssee in view of the Judgment of the Supreme Court reported in 219 ITR 581.

. In so far as second question is concerned, the same is answered against the assessee in view of the judgment of this court reported in 187 ITR 251.

. The questions are therefore, answered against the assessee and in favour of the revenue.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**